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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 168

FRED L. SHUTTLESWORTH, PETITIONER,

vs.

CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 29, 1963

CERTIORARI GRANTED OCTOBER 14, 1963

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA IN AND FOR JEFFERSON COUNTY

No. 22506

CITY OF BIRMINGHAM, ALABAMA, A MUNICIPAL CORPORATION, Plaintiff,

vs.

FRED L. SHUTTLESWORTH, Defendant.

ORGANIZATION OF THE COURT

At a regular term of the Circuit Court of the Tenth Judicial Circuit of Alabama, at which the officers authorized by law to hold or serve said Court were serving, the following proceedings were had in the cause styled: No. 22506 The State City of Birmingham vs. Fred L. Shuttlesworth to wit:

[fol. 1a]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

APPEAL BOND—Filed June 30, 1961

(See opposite) ☞

22506

APPEAL

THE STATE OF ALABAMA
Jefferson County

CITY OF BIRMINGHAM

We, Fred L. Shuttlesworth, principal and Jas Esdale

sureties, acknowledge ourselves indebted to the City of Birmingham, a municipal corporation, in the sum of ($300.00) Three hundred DOLLARS,

for the payment of which, well and truly to be made, we bind ourselves, our administrators, and executors. But the condition of the above obligation is such, that whereas the above bounden principal was tried and convicted

on the charge of Count 1. Interferring With an Officer

~~Count 2~~ While Discharging His Duties Sec 856

Count 3.

and has prayed and obtained an appeal to the Circuit Court of Jefferson County, Alabama, from the judgment of the Recorder's Court of the City of Birmingham, adjudging him to pay a fine of $100.00 One hundred DOLLARS,

Costs ($5.00) Fine Dollars; Fees Dollars,

and to perform hard labor for 180 days. Days,

rendered the 2 day of June 1961.

affidavit on reverse side of this bond and be acknowledged by a Notary Public.

☞ IMPORTANT—All sureties must complete affidavit on reverse s

rendered the 2 day of June 1961

Now, if the said principal shall appear at present Term of the Circuit Court of Jefferson County, Alabama, and from term to term thereafter until discharged by law, then this obligation to be void, otherwise to remain in full force and effect. And as against this obligation we waive all right under the laws of Alabama to claim any personal property as exempt from levy and sale.

Defendant demands a trial by Jury.

Witness our hand and seals this 3 day of June 1961

	Address
[illegible] (L. S.)	3191 No 27th Ave
Jas Estelle (L. S.)	809 - No 21st Street
By Jerry Alexander	Atty. In fact.
(L. S.)	

Approved 5th day of June 1961

William Drury

Recorder of the City of Birmingham

(FILE ENDORSEMENT OMITTED)

[fol. 1b]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 22506

CITY OF BIRMINGHAM, ALABAMA, A MUNICIPAL CORPORATION, Plaintiff,

vs.

FRED L. SHUTTLESWORTH, Defendant.

COMPLAINT—Filed December 4, 1961

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Fred L. Shuttlesworth, within twelve (12) months before the beginning of this prosecution, and within the City of Birmingham or the police jurisdiction thereof, did knowingly and wilfully interfere with, hinder, or prevent a police officer of the City of Birmingham; namely, Jamie Moore, Police Chief for the City of Birmingham, in the discharge of his legal duty in that said defendant did knowingly and wilfully place himself between said officers and a group of people commonly called "freedom riders" when said people were being placed in protective custody by said officer, and said defendant did knowingly and wilfully refuse to move out of the way of said police officer after being so ordered, contrary to and in violation of Section 856 of the General City Code of Birmingham of 1944.

William C. Walker, Attorney for Plaintiff.

[File endorsement omitted]

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 22506

[Title omitted]

MOTION TO QUASH—Filed December 4, 1961

Comes now the defendant in this cause, and respectfully shows unto this Honorable Court the following facts:

1. That this defendant was arrested on to-wit, May 17, 1961, and charged with the violation of Section 856 of the General City Code of Birmingham, Alabama.

2. That the said arrest came as a result of defendant's presence at the Greyhound Bus Depot in Birmingham, Alabama, on said date, where he had purchased a ticket and attempted to board a bus for Montgomery, Alabama.

3. The information or complaint in this cause is so broad that the defendant is not sufficiently apprised of what he is called upon to defend against, and, therefore, the charge is vague, indefinite and uncertain.

4. The information or complaint does not charge the defendant with any offense under the laws of the State of Alabama.

5. The information or complaint upon which this cause is based is insufficient to support prosecution in this cause, in that no offense is alleged which is cognizable by this Honorable Court.

6. That the allegations of the information or complaint, and each count thereof are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

7. The said Section 856 of the General City Code of Birmingham, Alabama, under which said complaint is brought, as applied to this defendant, a negro citizen of the United States, violates Section 4, of the Constitution of

Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 3] 8. That the aforesaid Section 856 of the General City Code of Birmingham, Alabama, as applied to this defendant is unconstitutional on its face, in that it in effect constitutes a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment of the United States.

9. That the said Section 856 of the General City Code of Birmingham, Alabama, as applied to this defendant in this cause, constitutes an abridgement of privileges and immunities guaranteed defendant as a citizen of the United States in violation of the Fourteenth Amendment to the United States Constitution.

10. That the said Section 856 of the General City Code of Birmingham, Alabama, as applied, constitutes a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

11. That this defendant has been tried in another action for conspiracy to Breach The Peace, and for a Breach of the Peace, in violation of Title 14, Section 119 (1) of the 1940 Code of Alabama, which said cause, numbered 4216, is now pending on appeal in this Honorable Court; that the violations complained of in the instant cause, grew out of the same facts and circumstances relied upon to support the aforesaid cause numbered 4216, now pending on appeal in this Honorable Court, and defendant avers that he is being put twice in jeopardy for one alleged offense, in violation of his right to due process of law under the Constitution and laws of the State of Alabama, and the Fourteenth Amendment to the United States Constitution.

Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

[fol. 4]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 22506

[Title omitted]

DEMURRERS—Filed December 4, 1961

Comes now F. L. Shuttlesworth, defendant in this cause, and demurs to the information or complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The warrant, affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the constitution and laws of the State of Alabama.

2. That the information or complaint upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the information or complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinances of the City of Birmingham, Alabama relied upon to support the complaint in this cause, are invalid in that they violate Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That the laws or ordinances relied upon to support the complaint in this cause, constitute an abridgement of freedom of speech and assembly violative or rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 5] 6. That the aforesaid statutes, laws or ordinances are unconstitutional on their face in that they are so vague

as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Statutes, laws or ordinances, constitute an abridgement of privileges and immunities guaranteed defendant as a citizen of the State of Alabama and of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Statutes, laws or ordinances constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Orzell Billingsley, Jr., Attorney for Defendant.

[File endorsement omitted]

[fol. 6]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 22506

[Title omitted]

MOTION TO EXCLUDE THE TESTIMONY AND FOR JUDGMENT—Filed December 4, 1961

Comes now F. L. Shuttlesworth, defendant in this cause after all of the testimony and evidence for the City of Birmingham has been given and received in this cause, and moves this court to exclude said testimony and evidence and to give judgment for defendant, and as grounds for said motion sets out and assigns the following, separately and severally.

1. The City of Birmingham has not made a case against this defendant.

2. All of the testimony and evidence given in this cause indicates that the defendant during the time and on the occasion in question merely exercised rights and privileges given to him as a citizen of the State of Alabama and of

the United States of America, by the laws and the Constitution of the State of Alabama and of the United States of America, by the laws and the Constitution of the State of Alabama, and by the First and Fourteenth Amendments to the Constitution of the United States of America.

3. There has been absolutely no evidence introduced by the City of Birmingham to support the complaint in this cause.

4. None of the testimony or evidence offered proves defendant guilty of any criminal act or unlawful acts during the time in question.

Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Defendant.

[File endorsement omitted]

[fol. 7]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

MINUTE ENTRY—December 4-5, 1961

THE STATE CITY OF BIRMINGHAM,

VS.

FRED L. SHUTTLESWORTH.

Appealed from Recorder's Court

(Interfering with an Officer While Discharging his Duties)

Honorable Geo. Lewis Bailes, Judge Presiding.

This the 4th day of December, 1961, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the defendant withdraws jury demand and the City of Birmingham files written Complaint in this cause; and defendant filed Motion to Quash and said Motion to Quash

being considered by the Court it is ordered and adjudged by the Court that said motion be and the same is hereby overruled; and defendant files demurrers and said demurrers being considered by the Court it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled and defendant being duly arraigned upon the written complaint of the City of Birmingham for his plea thereto says he is not guilty; and defendant files motion to exclude testimony and for judgment and said motion being considered by the Court it is ordered and adjudged by the Court that said motion be and the same is hereby overruled.

On this the 5th day of December, 1961, upon consideration of the pleadings and evidence submitted in this cause the Court being of the opinion that the defendant is guilty as charged in the complaint, and on recommendation of City Attorney Walker the Court assessed a fine of One Hundred and no/100 Dollars ($100.00) and costs against said defendant; it is therefore considered by the Court and it is the judgment of the Court that said defendant is guilty as charged in said complaint and that he pay a fine of One Hundred and no/100 Dollars ($100.00) and costs of this cause.

On this the 5th day of December, 1961, said defendant being in open court and having presently failed to pay the fine of One Hundred Dollars ($100.00) and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sen- [fol. 8] tence of the Law, that the defendant, the defendant, the said Fred L. Shuttlesworth, perform hard labor for the City of Birmingham for 52 days because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Fred L. Shuttlesworth, perform additional hard labor for the City of Birmingham for 180 days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to Fifty-one and 25/100 Dollars ($51.25), not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving Forty-seven and 25/100 Dollars ($47.25) taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for sixteen days, at the rate of Three Dollars ($3.00) per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended including the costs of feeding the defendant while in jail, for which let execution issue.

On this the 5th day of December, 1961, Notice of Appeal being given and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at Three Hundred Dollars ($300.00) conditioned as required by Law.

[fol. 9]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

APPEAL BOND—Filed December 5, 1961

Appeal Bond—Hard Labor Sentence

The State of Alabama
Jefferson County

Know All Men by These Presents, That we Fred L. Shuttlesworth principal, and James Esdale & Willie Esdale and Esdale Bail Bond Co. as sureties, are held and firmly bound

unto the State of Alabama, in the sum of Three Hundred Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; and we and each of us waive our rights of exemption under the Constitution and laws of the State of Alabama as against this bond.

The Condition of the Above Obligation Is Such, That whereas, the above bounden Fred L. Shuttlesworth was on the 5th day of Dec., 1961, convicted in the Circuit Court of Jefferson County, Alabama, for the offense of Interfering With An Officer While Discharging His Duties and had assessed against him a fine of One Hundred Dollars, together with the cost of this prosecution, and on the 5th day of December, 1961, on failure to pay fine was sentenced to perform hard labor for the City for 52 days, and an additional term for the cost, at the rate of seventy-five cents per day, and as additional punishment imposed the defendant was sentenced to perform hard labor for the City of Birmingham 180 days, from which sentence the said .... has this day prayed and obtained an appeal to the Court of Appeals of Alabama.

Now, If the Said Fred L. Shuttlesworth shall appear and abide such judgment as may be rendered by the Court of Appeals, and if the judgment of conviction is affirmed, or the appeal is dismissed, the said Fred L. Shuttlesworth shall surrender himself to the Sheriff of Jefferson County, at the County Jail, within fifteen days from the date of such affirmation or dismissal, then this obligation to be null and void, otherwise to remain in full force and effect.

[fol. 10] Given under our hands and seals, this the 5 day of Dec. 1961.

Rev. F. L. Shuttlesworth (L.S.), James Esdale (L.S.), Willie Esdale (L.S.), By A. E. Brooks, Atty in Fact (L.S.), Esdale Bonding Co. (L.S.), James Esdale, By A. E. Brooks, Atty in Fact.

Approved: Julian Swift, Clerk of the Circuit Court of Jefferson County.

[File endorsement omitted]

[fol. 11] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

CRIMINAL DIVISION

No. 22506

[Title omitted]

Transcript of Proceedings—December 4, 1961

Caption

The Above Styled Cause came on to be heard before the Honorable George Lewis Bailes, Judge, sitting without a jury, on the 4th day of December, 1961, at 4:45 P.M., when the following proceedings and testimony was heard.

APPEARANCES

Mr. Bill Walker, Assistant City Attorney, Birmingham, Alabama, for the Plaintiff.

Peter Hall and Orzell Billingsley, Attorneys at Law, Birmingham, Alabama, for the Defendant.

Reported by Jimmie Crumley.

Proceedings

COURT OVERRULES MOTION TO QUASH AND DEMURRERS

The Court: Let the Motion to Quash in Case No. 22506 be overruled and the Demurrers in 22506 be overruled.

Mr. Hall: We would like to have an exception.

The Court: Let's have an understanding, this case comes to this Court of course de novo from the Recorders Court, appealed therefrom, and with a demand for a jury, and nothing has been said to this Court about a jury.

Mr. Hall: If Your Honor please, we don't want a jury. Evidently there has been some error in that. We did not deliberately request a jury.

Mr. Walker: Your Honor, it could possibly be a clerical [fol. 12] error since so many of them do request jury trials, possibly it is merely a typing error from routine.

The Court: All right. With the statement of the defense and the prosecution as made in the record, it is sufficient for the Court. We will proceed.

Mr. Billingsley: If Your Honor please, we have some witnesses in the courtroom and we would like to ask for the rule.

The Court: The rule has been invoked.

(Witnesses placed under the rule.)

Evidence on Behalf of the Plaintiff

Jamie Moore, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, please?

A. Jamie Moore.

Q. What is your occupation?

A. I work for the City of Birmingham Police Department as Chief of Police.

Q. How long have you been so employed, Chief?

A. I have been in the Police Department a little bit over 25 years, and I have been Chief of Police a little over 6 years.

Q. Did you have occasion to go to the Greyhound Bus Station on or about May 17th of this year?

A. Yes, sir, I did.

Q. And approximately what time did you go to the Greyhound Bus Station?

A. I went to that bus station two or three or maybe four times that day, and one time was about this time of day. If I remember correctly, the last time I went was about 4 o'clock or something like that in the afternoon.

Q. Did you have occasion to arrest the defendant on any of the times you were at the bus station?

A. Yes, sir, I did. That was the last time.

Q. Now, Chief Moore, on the first occasion that you [fol. 13] were at the bus station did you see any Freedom Riders at that time?

A. I saw some of them that were in and around the station that I presumed were. Of my own knowledge I am sure I couldn't point them out, but they were pointed out to me as a part of the group that had come into Birmingham that later became Freedom Riders.

Q. Now, what occurred, if anything, on the first—what time did you say the first time you went to the bus station was?

A. I couldn't be for sure, but I went in the afternoon around this time, about 2 o'clock, I recall; and I went back again about 4 o'clock or in that neighborhood.

Q. Now, on the occasion you went back about 4 o'clock did you see any Freedom Riders at that time?

A. Yes, sir.

Q. What, if anything, did you do in regard to the Freedom Riders at that time?

A. When I got over to the bus station that time, why, I went through the bus station with some other officers and some superior officers in the Police Department, I know Captain Garrison was with me, and Captain Warren, I believe Captain Wall, and there was some other officers in and around the bus station, and the group was out on one of the platforms on the 6th Alley side of the bus station, and I went out and told that group of people in a voice loud enough to be heard who I was, I identified myself, and told them that due to the circumstances that day that I as Chief of Police was arresting them and taking them into protective custody of the City of Birmingham.

Q. Was the defendant there at that time?

A. As I went through the last door out of the bus station going towards that platform Freddie Lee Shuttlesworth and some other people I can't identify were near the pay station telephone towards the platform, but he was not out there at that time, and he came on out there about the time that I was talking to those people.

Q. And what happened then, if anything?

A. Well, he walked around to my left right close to me and got eventually between—I say eventually, it wasn't a [fol. 14] lot of time there, and I told him to leave the bus station. I called him by his name, I called him Fred, that he was not concerned with what was happening there, and he walked around and then got between me and some of those people I was talking to and I believe I asked him again to go—to get out of my way, and he said, if those people have to be arrested, why, he wanted to be arrested also.

Q. What did you do then, if anything?

A. I asked some of the officers to take him into custody at that time and I believe Officer T. T. Trammell, I believe was one of them, and I can't remember the other names, Mr. Walker.

Q. Now, Chief Moore, did you receive any complaints of any violence that occurred to these Freedom Riders on Mother's Day at the Trailway Bus Station—not these same ones, but of other Freedom Riders?

A. Well, of course, I was aware of some of the things that had happened at the Trailway Bus Station on Mother's Day, which was the 14th of May, and I was not in town when that was happening. It was handled by other members of the police department, but I knew about it.

And one of the times I went to the bus station, why, I drove back into where the buses park there and there was crowds of people in and around the bus station at that time. In fact, 6th Alley there from 18th to 19th Street, there was a lot of people in and around it. Some of them hollered at me and they were boisterous and in a jeering mood, and some of them hollered out, and I couldn't identify them, but it was "Take the police away and we will take care of it," or words to that effect.

Q. Now, Chief Moore, at 4 o'clock when you saw these so-called Freedom Riders where were the located when you saw them?

A. When I went in the last time when this happened, why, as you go into the bus station from the 19th Street side, as you walk straight back and keep to your left they were out under that shed there where the buses load. That would be on the 6th Alley side of the bus station under a shed.

Q. Did you attempt to arrest the Freedom Riders?

A. I did arrest them, or the officers did. I told them they were being arrested.

Q. What charge, if any charge?

[fol. 15] A. Protective custody of the City of Birmingham.

Q. Now, when did you first see the defendant on that occasion?

A. He was near the telephone booth just where the last door—close to where the last door is going out to the platform. He was inside the bus station when I saw him.

Q. Where were the Freedom Riders?

A. They were on beyond him back out under the shed not too far. Possibly as far as or further than the distance across this courtroom here.

Q. Now, at that time did you know the defendant in this case?

A. Yes, sir.

Q. Did you know where he lived?

A. I know where he lived.

Q. And where did he live?

A. He lived in North Birmingham. I don't know the exact house number.

Q. But he did live in Birmingham?

A. Yes.

Q. And this all occurred in the City of Birmingham?

A. Yes, sir.

Mr. Walker: That is all.

Cross examination.

By Mr. Hall:

Q. Chief Moore, when you saw this defendant on May 17th—incidentally, what time of day did you say it was that you arrested him?

A. I judge around 4 o'clock. That is my best recollection.

Q. Around 4 o'clock in the afternoon? Did you ascertain whether or not he was there at the bus station trying to get a bus to any particular place?

A. I did not.

Q. Do you know whether some of your officers questioned persons there in the bus station—

Mr. Walker: We object to that. It would call for hearsay, what someone else told him.

Mr. Hall: Chief Moore, as head of the Police Department of the City of Birmingham, and as such he gets reports from the officers he had dispatched there during a disturbance and I think as head of the Police Department [fol. 16] he can testify as to what reports he got from officers during the regular course of his duties.

The Court: I will leave it out.

Mr. Hall: We want an exception, Your Honor.

Q. Chief, when you first spoke to Fred Shuttlesworth how close was he to you?

A. He was closer to me than this Clerk of the Court here. I would say he wasn't over two to three feet from me.

Q. Two to three feet away?

A. That's right.

Q. Did you speak to him first or he speak to you?

A. I spoke to him.

Q. What did you say to him?

A. I told him, "Fred—" I called him Fred—I said, "You are not concerned in this. We are engaged in business," or words to that effect. "You get out of my way and don't bother us."

Q. Well, now, what occasioned you to speak to him at that time?

A. He was in my way and he was asking what was hap-

pening, what was taking place, and I had already announced to those people in a good loud clear voice who I was and my intention.

Q. Now, did he do anything other than ask those questions as to what was happening?

A. He walked around to my left and was between me and some of those people.

Q. Did he do any other act?

A. Your Honor, I would like for him to ask specifically, if he will, what he has in mind there.

Q. Did he do any physical act? Did he put his hands on anyone? Did he do anything other than ask the questions and walk around to your left?

A. He didn't put his hands on anyone that I saw, if that is what you are talking about.

Q. Was he profane, Chief, or loud?

A. He wasn't.

Q. Or argumentative?

[fol. 17] A. He was not profane.

Q. Was he loud and argumentative while talking to you?

A. I wouldn't say he was loud.

Q. Was there anyone else with him or near him except so-called Freedom Riders?

A. Well, there was people—there was quite a few people around that place and there were two or three men with him at that telephone booth and they could have been out there. I wouldn't say they were or were not.

Q. Would you say they stood between you and the Freedom Riders too?

A. No, they didn't.

Q. They moved on?

A. Well, now, I wouldn't say those same men came out there with him. I just don't know. There was quite a crowd out there.

Q. You arrested the Freedom Riders—actually you placed them in protective custody, is that correct?

A. Yes.

Q. You did not place a charge against them?

A. There was not a charge made against any of them.

Q. Did you arrest anyone else that day other than Fred Shuttlesworth at that place?

A. You mean did I arrest anybody?

Q. At that place and on that occasion?

A. I did not.

Q. There were other persons in and around the bus station on that occasion, as you formerly testified, I believe asking the police to leave and leave the Freedom Riders to them. Did you understand that to be a threat?

A. The people that were hollering at me were not in the bus station at that time. They were out in 6th Alley.

Q. They were out near the station or adjacent to it?

A. It is close to the station.

Q. Did you understand that request for the police to leave and leave the Freedom Riders to them to be a threat?

A. I understood there would be trouble if the police had [fol. 18] not been there and those people had been left alone.

Q. You didn't arrest any of those people, did you?

A. I didn't myself. If the Court will allow me, there were some people arrested, I am sure, that day. I don't know of my own knowledge—for different charges that day—we moved lots of people away from the bus station. Some more were arrested in and around there and i don't know their names

Q. What I was trying to do was pinpoint on this particular occasion at the time when you arrested Fred Shuttlesworth?

Mr. Walker: Your Honor, Chief Moore has answered the question. He said he didn't arrest anyone else. That was the question.

Q. That was the question, at that time?

A. I did not arrest anybody.

Q. Do you know if any person other than Fred Shuttlesworth and the Freedom Riders, who were taken into custody, was arrested at that time on that occasion at the Greyhound Bus Station?

A. You mean at that particular time?

Q. At that time?

A. I don't think there was anybody else arrested at that time.

Q. When Shuttlesworth was placed under arrest did he resist arrest?

A. I wasn't—I don't think he did. I did see him I believe after he was placed in the patrol car. I didn't see him if he did.

Mr. Hall: That is all.

Mr. Walker: That is all, Chief.

(Witness excused)

CAPT. JAMES WALTON GARRISON, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, please?

A. James Walton Garrison.

Q. And occupation?

A. Captain of Police.

Q. How long have you been on the police force?

A. Fifteen years.

[fol. 19] Q. Captain Garrison, did you have an occasion to go to the Greyhound Bus Station with Chief Moore on May 17th of this year?

A. I was at the Greyhound Bus Station with Chief Moore. I didn't go over there with him.

Q. Did you go over there before Chief Moore?

A. I don't actually recall whether I did or not. I believe I did.

Q. Were you there when the defendant was arrested?

A. I was.

Q. And about what time was the defendant arrested, if you recall?

A. Around 5 o'clock in the afternoon.

Q. Now, what time did you first go to the bus station?

A. I went over there about 2:30 or 20 until 3 or something in that neighborhood.

Q. Did you stay over there continually from 2:30 or 3 until the time the defendant was arrested?

A. Outside of short trips across to City Hall and directly back, I was never gone over 10 or 15 minutes at a time.

Q. Were the Freedom Riders there at 2:30 or 3 o'clock when you arrived?

A. No, sir.

Q. What time did the Freedom Riders arrive, if you know?

A. They came in shortly before 3.

Q. Did you see them when they came in?

A. I did.

Q. Was the defendant with them?

A. I don't recall whether he was with them at that time or not.

Q. Do you know the defendant?

A. I know him.

Q. Now, when did Chief Moore—when did you see Chief Moore after the Freedom Riders arrived?

A. It was sometime between 3 o'clock and the time of the arrest. I can't place the time any closer than that.

Q. What did Chief Moore do in regard to the Freedom Riders when he arrived?

A. He placed them in protective custody.

[fol. 20] Q. What did he say to them; how did he notify them who he was?

A. He got them altogether in a group—they were at the door of the bus that was supposed to go to Montgomery—he got them in a group and notified them he was Chief of Police of the City of Birmingham, that things were such that it was dangerous to them and that he was placing them in custody for their own protection.

Q. Now, where were you at when the Chief placed them in protective custody?

A. Standing right beside him.

Q. And were you with other people, a group of you?

A. Yes.

Q. Who was in the group?

A. There was the Chief, myself, Capt. Warren, Capt. Wall and Officer Trammell was standing right nearby.

Q. Where was the defendant when Chief Moore placed the Freedom Riders in protective custody, if you know?

A. I don't know at the time he told them that.

Q. Now, what happened in regard to this defendant at the time Chief Moore placed the Freedom Riders into protective custody?

A. He stepped between the Chief and the group of so-called Freedom Riders and stated that if they were arrested he wanted to be arrested also, and the Chief told him to move on, and he continued to interfere. I myself told him once to move on.

Mr. Hall: Your Honor, I ask that the word "interfere" be stricken. It is a conclusion on the part of the witness. He can just tell what he did or said.

The Court: All right.

A. And Shuttlesworth kept milling around there and I recall distinctly one time him getting between the Chief and the Freedom Riders.

Q. Did he move when he was told to move?

A. He did not.

Q. Do you know where Shuttlesworth lived?

A. Yes.

Q. Where does he live?

[fol. 21] A. I don't know the house number.

Q. Is it here in Birmingham?

A. It is here in Birmingham.

Q. Let me ask you this. Did the Freedom Riders live in Birmingham?

A. That I don't know.

Q. How did they come to Birmingham?

A. They came to Birmingham on a Greyhound bus.

Q. What disposition was ultimately made of the Freedom Riders? How did the city rid itself of them?

A. They were finally got out of town on a bus Saturday morning following this Wednesday the 17th.

Q. And where were they taken, if anywhere?

A. Their designation was Montgomery.

Mr. Walker: I believe that is all.

Cross examination.

By Mr. Hall:

Q. Capt. Garrison, I believe you said you were standing right with Chief Moore or near him when he announced to these so-called Freedom Riders that he was taking them into protective custody?

A. That is correct.

Q. Did he make a general announcement to everyone in the bus station? Did he get the group together and talk to them, or how was it done?

A. He walked out to the group and asked that they all—I don't remember the exact words, but come in hearing distance of him so they could understand what he had to say and then he made the announcement.

Q. Where were they at that time?

A. They were on the loading dock of the bus getting ready to go to Montgomery.

Q. Was the defendant Fred Shuttlesworth over there at that time?

A. I don't know exactly what time Shuttlesworth came up. He was standing in the bus station as we came out the door.

Q. In your best judgment he was still in the bus station when the Chief made this announcement?

A. I don't know where he was when the Chief made the announcement.

[fol. 22] Q. You didn't see him at that time?

A. No.

Q. And you did have these so-called Freedom Riders in your line of vision at that time?

A. That is correct.

Q. You would have remembered if he had been standing there, wouldn't you?

A. Probably so.

Q. Were you standing there when the defendant came up and asked what was going on?

A. Yes.

Q. Well, how was that done? Did he do that in a loud voice?

A. No, no unusual voice.

Q. Just ordinary voice?

A. That is correct.

Q. And he was told what was going on, or was he told to go ahead, or do you recall?

A. I don't recall that.

Q. You don't know how he was answered? Well, did he at anytime while—how long did Fred Shuttlesworth stand there and talk to you and Chief Moore?

A. It would be hard to place it in minutes.

Q. Well, just a few minutes?

A. It was a very few minutes.

Q. Did he at any time exhibit any pugnacious attitude? Did he put his hands on anyone or offer any argument?

A. Not verbally, but he didn't move.

Q. But he asked what was going on and he didn't move?

A. To the best of my recollection he asked what was going on and he did make the one statement that if they were placed in jail he wanted to go too.

Q. But did he say these people were his friends and that they were together?

A. I don't recall that statement.

[fol. 23] Q. Did he make that statement?

A. I don't recall that statement.

Q. Did he say they were all waiting on a bus for Montgomery?

A. I don't recall that statement.

Q. Did anyone say they were trying to get a bus out of there for Montgomery, any of those so-called Freedom Riders?

A. Not at that time to my recollection.

Q. Well, were they asked whether or not they were—

Mr. Walker: We object to this, Your Honor, where they were going or whether they were going anywhere or not.

The Court: Let him answer it.

A. Would you repeat the question.

Q. Capt. Garrison, isn't it a fact the police checked all the persons in and around the bus station on that occasion to ascertain whether or not they were legitimate passengers?

A. That is correct.

Q. You checked everyone?

A. We might have missed some, but if we did we didn't intend to.

Q. But everyone who was in and about that station on that date proved to your satisfaction or to Chief Moore's satisfaction that they were legitimate passengers?

A. That is correct.

Q. Now, do you recall whether or not this defendant said to you and to Chief Moore that he was with this group and they were waiting on a bus for Montgomery trying to get a bus for Montgomery?

Mr. Walker: We object again, Your Honor. I don't see where it is material to any issue whether the defendant was with the group or not insofar as the charge is concerned.

The Court: Well, whether he was with them or not probably wouldn't be; what he may have said might be material.

A. I don't recall that statement being made.

Q. Could he have said something to that effect, Capt. Garrison? Do you have any impression that he did?

A. I don't have any impression that he did. It is possible he could have and I don't recollect it.

[fol. 24] Q. Did you yourself arrest the defendant, Capt. Garrison?

A. I think that Chief Moore actually made the arrest. I might have. I don't remember for sure which one of us did, but one or two of us told the officer standing close by to take him into custody.

Q. I will ask you this, Capt. Garrison. Did you have difficulty getting these Riders under protective custody—were they trying to flee or get away?

A. No.

Q. Did they resist?

A. No.

Q. Did the defendant's conduct in anyway make your arrest or your duty in putting these people under protective custody any harder?

A. Yes.

Q. It did? How was that?

A. By continually getting be'ween us and them—I say continually, I recall one distinct time he got between us, and he kept milling around and wouldn't move on when we asked him to, and things were kind of tense over there at that particular time.

Q. When you say tense you mean these Riders actually gave the impression they were going to resist this arrest?

A. No, I don't mean that at all. It was tense from the standpoint of the crowd we had over there and we felt they were in danger actually of their lifes—these Riders.

Q. You mean that the Riders were in danger from some of the others in the crowd?

A. That is correct.

Q. Did the others in the crowd make any threats or say anything?

A. They weren't close enough at that particular time. We moved them back. They were not in hearing distance of us probably other than legitimate passengers who had business about the bus station.

Q. Did you arrest any members of that crowd other than the Riders and Fred Shuttlesworth?

A. Not at that time. There were some arrested.

Q. I mean on this occasion at that time?

[fol. 25] A. I did not, but I don't know whether there were any arrested or not.

Q. You don't know of any arrests other than the defendant and the Freedom Riders?

A. At this particular time I do not.

Q. Capt. Garrison, I believe you testified that you were at the station from 2:30 until that night sometime almost all day?

A. In the neighborhood I would say of 2:30 until 11:30 that night.

Q. Do you know how long this defendant had been at the bus station before he was arrested?

A. No. I had seen him around and then I would miss him and he would be gone and I would see him back and then later on he would be back and I couldn't answer that question as to the length of time.

Q. Now, when you would see him he would be with this group of Freedom Riders?

A. Part of the time and part of the time he would be around the bus station.

Q. What time did they arrive at the bus station—the Freedom Riders?

A. I would say shortly before 3.

Q. And that was about the time you saw the defendant?

A. I can't recall when I first saw him that afternoon. I had seen him several times about before the arrest took place, but what particular time I can't recall just when I did first see him.

Q. Capt. Garrison, did you yourself check the tickets on that occasion?

A. I checked some tickets, but very few. I mostly had them checked.

Q. Did you yourself examine the defendant to see if he had a ticket?

A. No.

Q. Do you know if he was so examined?

A. Of my own knowledge I don't know, but he was.

Q. He was?

A. Yes.

Q. And he did have a ticket?

A. That is my understanding.

Mr. Hall: Thank you, Capt. Garrison.

[fol. 26] Redirect examination.

By Mr. Walker:

Q. Capt. Garrison, let me ask you, you say there was a crowd at the bus station on that occasion?

A. A very large crowd.

Q. And where was this crowd located?

A. We had them at this particular time backed off from the bus station to the best of my knowledge and recollection, I believe they were across the street on one side and across the alley on the other and across 19th Street side. We were having to keep them there with policemen or otherwise they wouldn't have been across there.

Q. Do you have an opinion as to the size of the crowd?

A. Not in numbers, I don't because, as I say, I was most of the time right in the station and around the station and I didn't work right at the crowd as I would otherwise.

Q. Did these so-called Freedom Riders, did they experience any difficulty in obtaining transportation?

A. Yes, they did.

Q. What was the nature of that difficulty?

A. They couldn't get a driver to take the bus out.

Q. Now, getting back to this crowd of people, how did they act or what was the emotion of the crowd?

A. The attitude was belligerent, storming and overall anger.

Q. Was it directed at anyone in particular?

A. It was directed at these Freedom Riders.

Q. Capt. Garrison, do you have any opinion as to how many police officers were employed at the Greyhound Bus Station on that occasion?

A. I would say at least 30 or 35 or maybe 40 on this particular occasion. Over the period of the week I guess we used 80 per cent of the entire force there at one time or another.

Q. What was their assignment while—the bulk of them, getting away from the routine officers that are at the bus station all the time, what was the assignment of the extra officers?

A. Well, we had some officers that stayed right with these Freedom Riders all the time. We had others that was as- [fol. 27] signed to keep back the crowds. We had others to work traffic at the different intersections. We had 19th Street blocked entirely and had 7th Avenue blocked between 18th and 19th Street to avoid cars just continuing in a circle. And some were inside the bus station and stayed in the waiting room the entire time.

Mr. Walker: I believe that is all.

Recross examination.

By Mr. Hall:

Q. Capt. Garrison, if I may question you—

Mr. Hall: May I put one or two questions, Your Honor? I was wondering if this was re-direct?

Mr. Walker: Mine was re-direct.

Mr. Hall: I would one or two questions on that.

Mr. Walker: All right.

Q. Capt. Garrison, I believe you said that you were present when the defendant was told to go ahead and leave?

A. That is correct.

Q. Now, did he refuse to leave?

A. By not leaving. He didn't verbally refuse.

Q. He didn't say he wasn't going to leave?

A. No. The only statement he made, as I recall, was if the Freedom Riders were going to jail—he didn't use that term of course—but he said if they were going to jail he wanted to go also, or words to that effect.

Q. Was that part of an effort to persuade you and Chief Moore not to arrest the Freedom Riders? Was that the tail-end of a statement or was that the entire statement?

A. That is all I recall of it. Of that particular statement that was the entire statement because I was standing right there and that was it.

Q. He did not say, "I am not going"?

A. He didn't say that.

Q. How long would you say the entire interchange took place? You said two or three minutes?

A. No, I did not say two or three minutes. I wouldn't say the exact time.

[fol. 28] Q. Do you have any judgment as to the time?

A. No. It was a short time. It wasn't long, but I wouldn't attempt to place it in minutes because at the time being we were under stress and strain.

Mr. Hall: That is all. Thank you.

(Witness excused)

Capt. Jack A. Warren, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name?

A. Capt. Jack A. Warren, Birmingham Police Department.

Q. How long have you been employed in the Police Department?

A. Fifteen and one-half years about.

Q. Did you have an occasion to go to Greyhound Bus Station on May 17th of this year?

A. I was on duty there, yes, sir.

Q. What was the nature of your assignment at the Greyhound Bus Station?

A. On that date there was a great deal of tension at the Greyhound Bus Station due to the Freedom Riders being there at that time, and I was stationed outside of the bus station proper, specifically, I was where the buses are loaded, and there was a great crowd of people out there. And during this time, I recall it was between 4 and 5 o'clock in the afternoon, Chief Moore came to the bus station and he was going to arrest the Freedom Riders and put them under protective custody, and he approached them and informed them of his name and his rank and so forth in the Police Department and told them what he was going to do, and at this time Reverend Shuttlesworth was in the group or to one side of it, and, as I recall, he pressed to the fore-front there and Chief Moore informed him if he interfered he would have to arrest him also, and the Reverend Shuttlesworth made the statement during the course of the conversation if he arrested them—I mean by that the Freedom Riders—he wanted him to arrest him also.

Q. Did Chief Moore at any time tell the defendant to move?

A. He did ask him to get out of the way and not interfere with him.

[fol. 29] Q. And what response did the defendant make to that?

A. He didn't make any.

Q. What did he do?

A. He remained there.

Q. Were you present when the Freedom Riders arrived in Birmingham on that occasion?

A. To the best of my knowledge and recollection I was at the bus station when they arrived there, yes, sir.

Q. Did the defendant come in with them, or do you know?

A. I don't know.

Q. Did the Freedom Riders have bus tickets?

A. I don't positively know the answer to that, but as I recall I think they did.

Q. Were they trying to go anywhere or do you know?

A. Yes, it seems to me they were trying to get on a bus.

Q. Were they able to catch a bus?

A. I don't remember. I cannot answer that question and be specific about it. Just what the reasons were that they could or couldn't go or whatnot, I left shortly after they were put under protective custody and I can't answer that question.

Q. I was thinking more specifically of the period of time prior to the time they were placed in protective custody if they had made any effort to leave Birmingham on a bus?

A. I believe they were waiting to get on a bus or making an effort to get on a bus as I recall.

Q. Let me ask you this. You say there was a large crowd gathered at the bus station on that occasion?

A. Oh, yes, sir.

Q. Do you have any opinion as to the size of the crowd?

A. I would hesitate to say, sir, except the bus station proper was crowded. There were a great many people in it and there were a great many people—I would say in the neighborhood of maybe a minimum of 250 or 300 on the streets nearby on all sides of the bus station.

Q. What was the attitude of these people?

[fol. 30] A. Well, as I say, there was a great deal of tension at the bus station during this period.

Q. How was this evident?

A. You could see it in the faces of the people in the crowd, you could tell it in the talking to themselves and their muttering and trying to press forward toward the bus loading platform. I was very much aware of that. As a matter of fact, that is the reason I was there.

Mr. Walker: I believe that is all.

Cross examination.

By Mr. Hall:

Q. Capt. Warren, what time did you leave the Greyhound Bus Station that night?

A. I am not sure. I think, as I recall, that I left there shortly after the Freedom Riders were placed in protec-

tive custody and I believe that was about to the best of my knowledge and recollection maybe somewhat after 5 o'clock.

Q. Now, I believe you testified that when Chief Moore approached these Riders to place them in protective custody where were they standing—where were the Riders standing? Do you recall?

A. To the best of my recollection when he approached them and told them who he was I believe they were standing by a Greyhound bus close to the entrance of the bus as I recall.

Q. That is on the outside of the station, isn't it?

A. Yes, sir, it was on the station proper ground but it was not on the inside of the station itself.

Q. Was there a lot of noise out there? Was the crowd making any noise?

A. Well, I wouldn't say there was a great deal of noise. There were a lot of people around the buses and the buses were starting and so forth like that that caused a lot of noise.

Q. I believe you said the defendant was standing with the group of Freedom Riders when the Chief walked up, is that true?

A. Yes.

Q. Was he standing and talking to them?

[fol. 31] A. I will qualify that this way. I don't know that he was with them all the time, but he was there at the time Chief Moore put them under protective custody.

Q. He was there when the Chief and Capt. Garrison came up and put them under protective custody?

A. Yes.

Q. Did you hear this defendant made a statement of this type—you were close enough to hear him speak, were you not?

A. Yes.

Q. Did you hear him make a statement to the effect that we are all here together trying to get a bus out for Montgomery?

A. I don't remember that. I don't mean that he didn't say it, I just don't recall it.

Q. Did you hear him say anything?

A. The only remark that I remember him making was to the effect, "If you arrest them, take me too," or "If you arrest them, arrest me too." And the Chief asked him not to interfere and to get back out of the way. Now, that is pretty much the only remark I remember being made.

Q. How was he interfering at that time?

A. Well, in this way—

The Court: Don't you have to ask what was said and done instead of having him define the word "interfering"?

Q. What did Chief Moore say to this defendant at that time specifically when he first walked up?

A. I don't recall that he addressed him specifically on his initial approach.

Q. Not of that, but what did he say to Fred Shuttlesworth when he first spoke to him?

A. I don't remember right off.

Q. Now, do you remember a conversation between Chief Moore and Fred Shuttlesworth? Were you present at that time?

A. The conversation, such as it was that took place between Chief Moore and the Reverend Shuttlesworth was at the fore-front of the group of Freedom Riders. The Chief was at the front of them at the bus and the Reverend [fol. 32] Shuttlesworth was there and the Chief endeavored then after he placed them under protective custody to get them down the ramp toward the waiting patrol wagon, and the Reverend Shuttlesworth was in between the Chief and the Freedom Riders going along with them after having been asked not to interfere.

Q. So, he was going along with them down the ramp?

A. That is correct.

Q. Towards the waiting patrol wagon?

A. In that general direction, yes.

Q. And was it at that time that he made the statement that you testified to previously?

A. No, there could have been some more words passed subsequent the initial statement, but at the time this conversation took place was at the bus before the movement started toward the patrol wagon, and it was about 20 feet I would estimate from the bus to the patrol wagon.

Q. Did either the Chief or Fred Shuttlesworth raise their voices in speaking to each other?

A. I think not, no.

Q. Did you see the defendant do any physical act to stop the Chief from placing these Riders in custody other than standing there as you testified?

A. I did not.

Q. Did the Riders resist arrest?

A. No.

Q. Did Fred Shuttlesworth resist arrest?

A. No.

Mr. Hall: That is all.

Mr. Walker: That is all.

(Witness excused)

Officer T. T. Trammell, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Walker:

Q. State your full name, Officer Trammell?

[fol. 33] A. Officer T. T. Trammell, Patrolman, City of Birmingham.

Q. How long have you been so employed?

A. Approximately eight years.

Q. On May 17th this year did you have occasion to be at the Greyhound Bus Station at approximately 4:30 or 5 o'clock?

A. Yes, I did.

Q. Who were you with on that occasion?

A. I went over there from City Hall with Officer A. Y. Parker and my superior officer was over there also, Chief Moore, Capt. Garrison, and numerous other fellow officers.

Q. Now, were you present when the defendant was arrested?

A. Yes, I was.

Q. And who arrested the defendant?

A. I arrested him on the orders of—I believe it was Capt. Garrison. Of course, Capt. Garrison and Chief Moore were right there together and so was I, along with other officers, but I believe it was Capt. Garrison told me.

Q. When did you first see the defendant on that occasion at the time he was arrested immediately before that? Did you see the defendant say five minutes before or two minutes before?

A. Yes.

Q. What was the defendant doing at that time, if anything?

A. The defendant was standing in a crowd of the Freedom Riders there. They were in a circle, as a matter of fact, or a semi-circle all gathered up together and he was talking. Well, as a matter of fact, I was over there observing him a lot longer than five minutes before I placed him under arrest.

Q. Were you present at any time when Chief Moore was talking to the Freedom Riders?

A. Yes, I was.

Q. Where was the defendant at that time, if you know?

A. Well, I don't know what bus lane it was. You know, they have those stalls that the buses pull in when they take [fol. 34] passengers, but it was on the south side rear of the Greyhound Bus Station.

Q. Where was the defendant in relation to the Freedom Riders?

A. Well, he was standing alone then.

Q. He was with them?

A. With their luggage and stuff they had with them.

Q. What, if anything, did the defendant do when Chief Moore addressed the Freedom Riders?

A. Well, he listened to them. He was right there, and if my memory serves me right, he wanted to know why they were being placed under protective custody.

Q. Did the defendant move or do anything while the Chief was talking to the Freedom Riders?

A. When Capt. Garrison, if I may answer the question this way, asked me to place Shuttlesworth under arrest I took him by the elbow and told him he was under arrest

and first he was a little reluctant and pulled away. Is that what you are talking about?

Q. That is part of it. Where was the defendant standing when you placed him under arrest?

A. He was there about the same place. He never left that place on the south rear of the Greyhound Bus Station.

Q. Was he between Chief Moore and the Freedom Riders?

A. Approximately.

Q. Did you hear Chief Moore at anytime ask him to move out of the way?

A. Yes, I did.

Q. Where was the defendant standing when Chief Moore asked him to move out of the way?

A. I don't recall.

Q. Do you recall whether the defendant did move at that time or not?

A. No, sir, I don't.

Q. Officer Trammell, was there a crowd at the bus station on that occasion?

A. Yes, there was.

Q. Where was the crowd located, or describe the crowd?

A. Well, a crowd had gathered across the street on the [fol. 35] eastern side of 19th Street looking over to the bus station. As a matter of fact, they were on 7th Avenue on the north side and inside the bus, in front of it, and around it.

Q. What was the attitude of the crowd?

Mr. Billingsley: We object to that, Your Honor, as to the attitude of the crowd. He doesn't know what the attitude of the crowd was. It is not shown there was really a crowd.

The Court: What was your statement?

Mr. Billingsley: I say it has not been shown that there actually was a crowd as far as the testimony of this officer is concerned. However, I am specifically objecting to the question as to what was the attitude of the crowd.

The Court: All right.

Mr. Walker: Your Honor, have we established that there was a crowd? I thought we had?

The Court: Well, I think the objection was addressed to the attitude—what was the attitude.

Mr. Walker: Yes, sir.

Q. What did you observe the crowd, if anything?

A. In my best judgment there was a lot of unrest among both colored and white that were gathered there and, of course, naturally I don't know if they had tickets or not, but it just seemed like everything could just erupt in just one fast moment.

Q. Is the bus station your usual assignment?

A. No, sir.

Q. How many officers were working the bus station on that occasion, if you know?

A. Well, in my best judgment there was quite a number of them.

Q. Would you estimate it over 30?

A. I would say approximately. Not over, but around that.

Q. In that vicinity?

A. Yes.

Q. Do you have an opinion as to the normal number of police officers that work the Greyhound Bus Station?

[fol. 36] A. One on every shift.

Q. Do you know whether the Freedom Riders had tickets?

A. No, I don't.

Q. Do you know if they were going anywhere?

A. No.

Mr. Walker: I believe that is all.

Cross examination.

By Mr. Hall:

Q. Officer Trammell, were these persons had have been referred as Freedom Riders standing in a bus lane at some place where passengers usually go at the Greyhound Bus Station?

A. Yes. If I may elaborate a little further on that—

Q. Go ahead.

A. In the bus lanes—I say bus lanes, they are stalls or something and it is cement and the bus pulls right on up

next to the curb and pulls into it and they are numbered, and they were standing—as a matter of fact, there was a bus in there and they were standing next to it.

Q. Were they trying to board the bus or could you tell from their activities that they wanted to get on the bus or did not want to get on the bus?

A. Well, that is what it appeared to me. They were there with their luggage right in the stall like it appeared they were attempting or were going to.

Q. Now, at that time was Fred Shuttlesworth, the defendant here, was he standing there with them? Was he standing there at that time, Officer Trammell?

A. He was.

Q. Did he have his luggage or do you recall?

A. No, if he had his luggage it was setting on the curb. He didn't have anything in his hand as I recall.

Q. If it had it it was on the curb, but from all indications he was there with that crowd to catch that bus, is that correct?

A. That is correct.

Q. Was that at the time Chief Moore and Capt. Garrison came up or just prior thereto?

[fol. 37] A. Well, let me say this if I may again. That when I went over to the bus station me and Officer Parker, I didn't see the Chief until I guess about 10 of 15 minutes later. Of course, we were told just to walk around the bus station, but he was there with the Freedom Riders when the Chief come up and Capt. Garrison also.

Q. All the Riders and Fred Shuttlesworth was standing there at the bus when the Chief came up and said he was going to place them under protective custody, is that correct?

A. That is correct.

Q. Now, how close were you to them at that time?

A. About as close as I am from this gentleman here, the recorder.

Q. Would you say two or three feet in your best judgment?

A. Possibly.

Q. Do you know whether any of these Freedom Riders or the defendant Fred Shuttlesworth resisted arrest?

A. No.

Q. They didn't resist arrest at all, did they?

A. Well, let me elaborate on this again, if I may. When I placed Fred Shuttlesworth under arrest we took him immediately on the other side of the bus station to where Car 25 was parked. That was the car I was assigned to that day. And put him in the back seat of the car. What took place over there as far as the others are concerned after that, I don't know.

Q. This is something I can't quite get clear in my mind, Officer Trammell. You were told to arrest the defendant, is that correct?

A. That is correct.

Q. Did you observe the defendant break any ordinance or laws of the City of Birmingham before you arrested him?

Mr. Walker: We object to that, Your Honor. He was just following instructions.

The Court: Well, he can answer whether he arrested him on instructions or arrested him for some act he saw him do or fail to do. He can explain that.

A. I was arresting Fred Shuttlesworth on instructions [fol. 38] from my superior officer, Capt. Garrison.

Q. Now, Mr. Trammell, what I am trying to get at, did you hear the announcement that Chief Moore made to this assembled group of Riders?

A. I did.

Q. What in effect was that announcement?

A. He first come up and I was standing approximately two feet from the group and he said, "I am Jamie Moore, Chief of Police, City of Birmingham." And then I remember that, and then he went on and said a few more words and he said, "I am placing this group, the Freedom Riders, or you people, under arrest for protective custody." And that is when I arrested Fred Shuttlesworth.

Q. You arrested Fred Shuttlesworth right then?

A. Well, it might have been a couple seconds, I don't recall.

Q. Nothing more was said by the Chief?

A. Not that I recall, no.

Mr. Hall: That is all.
Mr. Walker: No further questions.

(Witness excused)

Mr. Walker: That is all for the City in this case, Your Honor.

(Recess)

Mr. Walker: Judge Bailes, is it all right if we let Trammeli go?
Mr. Hall: Yes.

MOTION TO EXCLUDE TESTIMONY AND FOR JUDGMENT AND COURT'S OVERRULING OF MOTION

Mr. Billingsley: Your Honor, at this time we would like to make a motion to exclude the testimony in this case and ask for a judgment for the defendant, and we further say:

Come now F. L. Shuttlesworth, the defendant in this cause, after all the testimony and evidence for the City of Birmingham has been given and received in this cause and move the Court to exclude said testimony and evidence and to give judgment for the defendant, and as grounds for said motion, sets out and assigns the following separately and severally:

1. The City of Birmingham has not made a case against this defendant.

2. All of the testimony and evidence given in this cause [fol. 39] indicates that the defendant during the time and on the occasion in question really exercised rights and privileges given to him as a citizen of the State of Alabama and of the United States of America by the laws and constitution of the State of Alabama and of the United States of America, and by the First and Fourteenth Amendment to the Constitution of the United States of America.

3. There has been absolutely no evidence introduced by the City of Birmingham to support the complaint in this cause.

4. None of the testimony or evidence offered proves the defendant guilty of any criminal act or unlawful acts during the time in question.

We further say to the Court there is no necessity to go over the evidence involved in this case, and we also file our written motion to exclude the testimony and for a judgment in this case.

We ask that the Court grant the motion.

The Court: Please let the motion be overruled.

Mr. Billingsley: We take exception, Your Honor.

EVIDENCE ON BEHALF OF THE DEFENDANT

FRED L. SHUTTLESWORTH, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hall:

Q. State your name and address, please?

A. Fred L. Shuttlesworth, 3164—29th Avenue, North.

Q. Are you the defendant in this case?

A. I am.

Q. Were you on May 17th last at Greyhound Bus Station in the City of Birmingham after about 3 or 4 o'clock in the afternoon?

A. Yes, I had been there three or four hours.

Q. Directing your attention to that time on that particular occasion, were you at that time arrested by officers of the City of Birmingham?

A. After we had been there several hours, yes.

Q. Will you tell the Court what you were doing there at the Greyhound Bus Station on that occasion?

[fol. 40] A. A group of us from the city had joined with a group that had come in on a bus from Nashville and we were attempting to catch a bus out of the City of Birmingham to Montgomery. In fact, we had tried to catch two buses.

Q. Had you bought a ticket for Montgomery at that time?

A. Yes, before that time—before that hour.

Q. About what time did you go down to the Greyhound Bus Station that day?

A. Between 2 and 3 o'clock to catch the bus that was scheduled around that time—may have been a little after 2 or 3—I don't recall the exact moment.

Q. Did that bus go to Montgomery?

A. It did not. We tried to get on it for awhile and the driver refused to drive and we just stood up there at the bus ramp by the door, and after awhile the station manager announced that that one wasn't going and we decided to wait on the next one which was scheduled out around 5 o'clock.

Q. Now, had the next bus that was going to Montgomery, had it come at the time you were standing there with the group?

A. No.

Q. You were standing there waiting for that bus?

A. Yes.

Q. The group you were standing with, were these the so-called Freedom Riders?

A. I believe maybe 12 or more were from Nashville and there were 6 local people from Birmingham arrested in that group with myself.

Q. Six local people? Now, let's see if I can understand you. You mean that there were 12 persons who had come here from Nashville?

A. Twelve or more.

Q. And there were some six persons from Birmingham who had joined this group and were on their way to Montgomery; is that what you mean?

A. That is correct.

Q. On this particular occasion when Chief Moore came up and spoke to you, do you recall that?

[fol. 41] A. I was in the group.

Q. What did the Chief say when he walked up to the group?

A. He identified himself and said, "I am Chief Moore," or words to that effect, Chief of the Birmingham City Police, and we have decided to arrest you all for your own protection."

And I asked him what did he say, and he said he decided to arrest us for our own protection. And then he recognized

me in the crowd and he said, "Shuttlesworth, are you with the group?"

I said, "I am. We have been trying to get the bus out for two hours or more."

And he said, "Well, you go on, I don't want any trouble out of you."

And I said, "I am with the group and I want to catch a bus." And he said, "If you don't go on, I will have to arrest you." And I said, "Well, whatever happens on all them will happen to me; we are all together."

So, he asked—I don't know—one of the officers to arrest me, and they took me in the patrol car and the rest of them in the wagon. We all started off about the same time.

Q. You saw Officer Trammell who testified for the City of Birmingham just a little while ago?

A. Yes.

Q. Did you recognize him as the officer who arrested you on that occasion?

A. He and officer Garrison were the arresting officers, and he took me by the hand and said, "Fred, come on, you are under arrest."

Q. Did you go?

A. Yes.

Q. Did you resist arrest?

A. I did not.

Q. Did you at any time interfere with the—

Mr. Walker: We object to that, Your Honor.

The Court: Might be objectionable in that form.

Q. Did you at any time attempt to restrain Chief Moore or any officer of the City of Birmingham in and about their duty?

[fol. 42] Mr. Walker: We object, Your Honor. That is leading.

The Court: You might just find out what was said and what was done. That is always the safest area.

Q. Did you say anything other than what you had just testified to?

A. That was the substance of what was said.

Q. Is that all of what you said in substance?

A. Yes. After he repeated the second time for me to go home, then he said to this Officer Garrison, I believe, "Put him under arrest."

Q. Did the Chief at anytime ask you to move out of his way?

A. No. He said, "You go home, I don't want to be bothered with you, I don't want any trouble out of you."

Q. Where were you standing during this time?

A. There were at least 18 people in this group—12 or 18—or between 18 and 20, and I was in about the front. Maybe there were two or three standing right up with me in the front, and there was one standing maybe between me and the officers. I was back on the interfringe area of the group.

Q. Were you at anytime standing between the Chief and the group?

A. No.

Q. Or between Officer Garrison and the group?

A. The other policemen were closer to the group than Chief Moore was at all times.

Q. Did you at anytime offer any resistance?

Mr. Walker: We object to that.

The Court: Sustain.

Q. You testified that there were other persons in that group who lived here in Birmingham. Were they also detained in protective custody?

A. Yes, six of them—I believe six local citizens.

Q. And no one else in the group was arrested and charged with the violation of any law other than yourself, is that right?

A. That's right. Of course, I wasn't told there what I was charged with.

Q. What were you told?

A. Nothing but he just told them to place me under arrest. He talked to us as a group and told us we were under [fol. 43] protective custody, and then when he discovered me in the group he told me to go home.

Mr. Walker: We object to that form of questioning. We would rather it come from questions and answers. It is non-responsive.

The Court: Leave it in.

Q. Did the officer ever tell you why you were arrested?
A. I had been arrested some time before the charges were placed against me.
Q. Had you been carried to the jail before the charges were placed?
A. I was in the jail maybe 40 or 30 minutes at least.
Q. Before you were told what you were arrested for?
A. That's right.

Mr. Hall: That is all.

Cross examination.

By Mr. Walker:

Q. Shuttlesworth, did you live in Birmingham at that time?
A. I did.
Q. How long had you lived in Birmingham at that time?
A. Above eight years.
Q. And you are rather well known in Birmingham—I mean by that the Police Department knows you, in other words, you have acquired a reputation with the Civil Rights Movements?
A. I would presume so.
Q. The same would not be true for the six local people, is that true?
A. On the contrary, at least three of the people who were arrested were always seen with me at meetings and whereever I be by the police so that they knew at least three of the men.
Q. You say there were 18 of the Freedom Riders all tolled, is that correct?
A. If you count the local citizens, there were 18 or 19. I think the number of people that came in on the bus was 12 as I recall.
Q. Where did they come from?
A. From Nashville, Tennessee.
Q. And you know from your own knowledge that Chief Moore knows all six of these local people, is that correct, or three of these local people?
[fol. 44] A. I said he had seen them.

Q. Do you know for a fact that he knows them?

A. I think so. One or two of them surely.

Q. When has Chief Moore himself seen those people that you know of?

A. On several occasions at the church after the bombing we went down to have audiences with Chief Moore. We had had one or two I am sure.

Q. How many people did he see on the occasion after the bombing besides those two or three?

A. Chief Moore came out to the church several times and these particular persons to whom I refer were always with me. In fact, Chief Moore referred to one of them as a body guard for me one time in testimony in this court.

Q. Now, you have a church, is that correct—or did have a church?

A. I was pastor at that time of the Bethel Baptist in this city in North Birmingham.

Q. You have rode buses in and out of Birmingham before, have you not?

A. Yes, sir.

Q. And you were never arrested for riding a bus or anything of that nature?

A. You mean not local buses?

Q. I mean interstate buses, Greyhound buses and Trailway buses?

A. Not before that time as I recall.

Q. Now, these Freedom Rides are sponsored by CORE, is that correct?

A. There was a national group that came from Washington that was sponsored by CORE. The group that came Wednesday subsequent to Sunday May 14th were not sponsored by CORE. As I understand, they were a local group that decided themselves to do it.

Q. And these 12 people that came in from Nashville, were they all from Nashville?

A. Well, they were students maybe from different localities, but they were residents at that time at the colleges and universities in Nashville, Tennessee.

Q. All 12 of them from Nashville?

A. All 12 of them.

Q. In schools there?

[fol. 45] A. Yes.

Q. These 6 local people, were they in school in Nashville?

A. I believe one of the 6 local people was a girl who had been in school in Nashville but she was in Birmingham on vacation. There was two ladies arrested locally and she was one of those.

Q. Did you see the large crowd that had gathered around the bus station?

A. Now, you are referring to Wednesday May 17th?

Q. That's right, at the time you were arrested?

A. The groups that was around the bus station on Wednesday was nowhere near what the group had been there before. There were some people in the alley, yes.

Q. Wasn't there people standing out on 7th Avenue and 19th Street?

A. Well, if you refer to all of the day, the crowd gathered as the day wore on and as the Press talked about the activities of the group, the crowd became—as people got off from work the crowd became larger naturally.

Q. You were aware that there had been some trouble at the Trailway Bus Station—

Mr. Billingsley: We object to that and ask it be stricken from the record. This incident involves the Greyhound Bus Station and the charge is interfering with an officer and has nothing to do with some prior happening that occurred on another date.

The Court: Let him answer.

Mr. Billingsley: We except.

A. Read the question back, please.

(Question read)

Q. —the preceding week?

A. I was. I presume most everybody was aware of that.

Q. And you were aware that that involved Freedom Riders, is that correct?

Mr. Billingsley: Your Honor, I would like to object again and say that is immaterial, irrelevant and incompetent—that last question put by the counsel for the City of Birmingham.

[fol. 46] Mr. Walker: Your Honor, the fact whether it was true or not, we offer it that if he had heard it that it would be notice to him of the condition that were likely to exist at the Greyhound Bus Station a week later.

Mr. Billingsley: If Your Honor please, we will admit that there was some conditions that occurred on another time and another place, but as far as this defendant is concerned, he is charged with interfering with the business of Chief Jamie Moore. He is not charged in being in a situation or some violence that occurred at some prior time, and it is immaterial, irrelevant and incompetent.

Mr. Walker: We feel, Your Honor, that the atmosphere of Birmingham at the time is highly material insofar as what would constitute interference. If this had happened in an open field out in the country it would take probably more than it would under the conditions that existed here in Birmingham at that time, and we think it is material as tending to show the conditions of what existed a week before to show some relation to what existed on the occasion in question.

The Court: Let him answer.

Mr. Billingsley: We except.

A. Read the question back, please.

(Question read.)

A. The answer is yes.

Q. And you were aware that this trouble involved Freedom Riders, is that correct?

Mr. Billingsley: I would like to object again and assign the same grounds of objection as we had on the previous question.

The Court: The witness was previously distinguishing between the 12 riders out of Nashville and the local 6 who joined them as not being under sponsorship of CORE and was distinguishing them from other Riders. I think it is competent in that context. Please let him answer.

Mr. Billingsley: We take exception.

(Question read.)

A. What the Press calls Freedom Riders, yes.

Q. And those were different Freedom Riders at the Trail- [fol. 47] ways than the ones at the Greyhound Bus Station, is that correct?

A. The people at the Trailways Bus Station were adults from the North—who started in the North. The people who came in from Nashville were students mostly, young people.

Q. And the group from Nashville has no connection with CORE whatsoever?

A. That is my understanding. I think they were sponsored by the Nashville Christian Leadership or something like that.

Q. Were you instrumental in any way in bringing the Freedom Riders into Birmingham?

Mr. Hall: Your Honor, we object to this question. Immaterial, irrelevant and incompetent. Has nothing to do with the issues involved here, which is the charge of interfering with a police officer, whether or not he brought these people here or otherwise.

The Court: Let him answer.

Mr. Hall: We except.

A. To my knowledge I was not instrumental in bringing them into Birmingham, no, sir.

Q. You made no telephone calls or wrote letters?

A. I had received some telephone calls, if that answers your question, but I made none in connection with them, no.

Q. Did you receive any telephone calls from them?

A. From the group on the bus or from someone outside the city?

Q. From anyone in regard to—

A. Yes, I received the telephone calls— Am I required to answer that? The morning that the 12 students—the morning of the 17th I received a call from Nashville from a young lady identifying herself as Miss Diane Nash, concerning it.

Mr. Hall: May it please Your Honor, this defendant has been charged with the violation of the State Statute having to do with the events of past May 17th which action was tried in Judge Frances Thompson's Court and is now pending on appeal in the Circuit Court of the Tenth Judicial

Circuit. Now, the matters to be litigated are the very matters which we are going into here and now, and we want to object to the asking of these particular questions and requiring this witness to answer these questions when he will [fol. 48] have to be on trial and will have to answer them sometime soon. We say again they are incompetent; they have absolutely no bearing on the issues involved in this case, although the answers probably may or may not prejudice him in the defense of the case now pending in this court.

The Court: Please let him answer.

Mr. Hall: We except.

A. To answer your question, Miss Nash called and said some students were enroute at that time about 5 o'clock in the morning to Birmingham.

Q. And you never talked to any of the 12 until they arrived in Birmingham?

A. I did not.

Q. When did you first see the Freedom Riders from Nashville?

A. When they got off the bus, those that were allowed to get off at the Greyhound Bus Station, I believe around 11 o'clock or somewhere that morning.

Q. Now, did you buy a ticket to Montgomery?

A. I did.

Q. Did you have any luggage with you?

A. I had a hand valise I think.

Mr. Walker: I believe that is all.

Mr. Hall: We have no further questions.

(Witness excused.)

VERA BROWN, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Billingsley:

Q. Will you state your name to the Court, please?

A. Vera Brown.

Q. Where do you live?
A. 1432—Tallapoosa Street.
Q. In the City of Birmingham?
A. Yes.
Q. County of Jefferson?
A. Yes.

[fol. 49] Q. Were you present on May 17, 1961 at the Greyhound Bus Station around anytime between the hours of 2—from 2 to 5 o'clock?
A. Yes, I was.
Q. Do you know the Reverend F. L. Shuttlesworth?
A. Yes.
Q. The defendant in this cause?
A. Yes.
Q. You do know him?
A. Yes.
Q. Did you know him on May 17, 1961?
A. Yes.
Q. Was he present on that occasion at the Greyhound Bus Station?
A. Yes.
Q. Do you recall whether or not there were any other Negroes present who had purchased tickets to travel to Montgomery, Alabama?
A. Yes, there were.
Q. Had you purchased a ticket?
A. Yes, I did.
Q. Where did you purchase your ticket?
A. At the ticket window.
Q. You purchased it from the ticket window to go where?
A. To Montgomery, Alabama.
Q. Do you know whether or not Reverend Shuttlesworth had purchased a ticket?
A. Yes, he had a ticket also.
Q. Where was his ticket supposed to take him to?
A. To Montgomery, Alabama.
Q. I ask you further if you recall the presence of Chief Jamie Moore at the Greyhound Bus Station on May 17th?
A. Yes, he was there.
Q. Do you recall the approximate time Chief Moore arrived at the bus station?

A. Between the hours of 4:30 and 5 o'clock. Around that time.

Q. Did Chief Moore have any conversation with you?

A. Not me personally.

[fol. 50] Q. Do you know whether he had any conversations with anyone else in your presence?

A. He spoke to a group of us.

Q. Spoke to a group of you?

A. A group of people.

Q. What did he say to you?

A. He identified himself and said he came to take us under protective custody.

Q. Was the Reverend Shuttlesworth present at that time?

A. Yes, he was.

Q. Did he have any conversation with Reverend Shuttlesworth?

A. Yes. He said something to him.

Q. I see. Do you recall what he said to Reverend Shuttlesworth?

A. He said, "Fred, we don't want you, why don't you leave or go home."

Q. He said what?

A. He said, "Why are you here? Why don't you leave and go home," or something to that effect.

Q. And what did Reverend Shuttlesworth say to him?

A. He said he was with the group and he had bought a ticket to go to Montgomery and he wanted to go.

Q. Was anything further said after then?

A. No, there wasn't.

Q. Do you recall whether or not Reverend Shuttlesworth was arrested?

A. Well, after that little conversation Mr. Moore told the officers to take him away and arrest him.

Q. Did the Reverend Shuttlesworth make any motions toward the Chief to attack him or anything of that nature?

A. No, he didn't.

Q. Did he refuse to permit Chief Moore to leave the bus station or to go to any other place in the bus station?

A. No, he didn't.

Mr. Billingsley: That is all.

Cross examination.

By Mr. Walker:

Q. Vera, you say that Chief Moore told the defendant, [fol. 51] said, "Fred, why don't you leave and go home?"

A. Yes, he did.

Q. And what did the defendant do then?

A. He replied by saying he was with the group.

Q. Isn't it a fact he said, "If you arrest them, arrest me too?"

A. Possibly.

Q. Shuttlesworth lives in Birmingham also, doesn't he?

A. You mean prior?

Q. He did at that time?

A. Yes, he did.

Q. And didn't Chief Moore tell you he was placing the group in protective custody?

A. Yes, he did.

Mr. Walker: That is all.

Redirect examination.

By Mr. Billingsley:

Q. Was Reverend Shuttlesworth with this group that the Chief said he was going to place in protective custody?

A. Yes, he was.

Q. Were you later taken to the City jail?

A. We were.

Q. How long were you confined there?

A. About 12 hours.

Q. Were you later charged with violating any of the City Ordinances of the City of Birmingham?

A. I don't know.

Q. You weren't tried in a court later on, were you?

A. No.

Q. But you were released and sent home?

A. Yes.

Q. Were there any other Negroes present in the group from Birmingham?

A. Yes.

Q. Do you recall who they were?
A. Yes, I do.
[fol. 52] Q. Who were they?
A. They were Mr. James Armstrong, the Reverend King, Mr. Lincoln Hendricks and Mr. Eugene—I can't think of his last name.
Q. Were they taken into custody also?
A. Yes, they were.
Q. And they were subsequently released?
A. Yes.
Q. Do you know whether or not they were charged with interfering with an officer—the lawful duties of an officer?
A. No, I don't.
Q. Were you charged with that?
A. No, I wasn't.
Q. Just one more question. Was a Miss C. therine Burke also present in this group?
A. Yes, she was.
Q. Does she live in Birmingham?
A. Yes.
Q. What was she doing at the time? Was she in school or working at the time this incident took place?
A. She was in school.
Q. Where?
A. Nashville, Tennessee.

Mr. Billingsley: That is all.

(Witness excused.)

Mr. Billingsley: That is all.
Mr. Walker: The City rests.
Mr. Billingsley: Your Honor, the defendant rests and we would like to renew our motion to exclude the testimony and a judgment for the defendant.
The Court: Same ruling.
Mr. Billingsley: Take exception.
Mr. Walker: We don't chose to argue, Your Honor.
Mr. Billingsley: We don't care to argue.

The Foregoing Was All the Testimony in the Case.

[fol. 53] (Whereupon on December 5, 1961 at 11:10 A.M. the Court read orders of the Court in the foregoing styled cause, after which the following occurred:)

Mr. Hall: If Your Honor please, did we offer a motion to exclude in this case?

Mr. Billingsley: Yes. We made an oral motion with the right to file a written motion which I will bring to the Court.

The Court: For the purposes of the record, does it make any difference?

Mr. Hall: No, sir.

The Court: I want you to have whatever you are entitled to. All right.

Mr. Billingsley: Your Honor, we would like to file notice of appeal in this case.

The Court: All right. The appeal bond will be $300.

[fol. 54] Court reporter's certificate (omitted in printing).

[fol. 55] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 56]

IN THE COURT OF APPEALS OF ALABAMA

SIXTH DIVISION 856

FRED L. SHUTTLESWORTH, Appellant,

v.

CITY OF BIRMINGHAM, Appellee.

ASSIGNMENTS OF ERROR

Now comes the appellant, defendant in the case below, and shows unto the Court that manifest error has been committed on the trial of this cause in the court below, to the hurt and prejudice of this appellant and as grounds of error assigns the following separately and severally:

1. The court erred in overruling appellant's motion to quash filed in this cause. (Tr. 2, 3, 7, 11.)

2. The court erred in overruling the appellant's demurrers filed in this cause. (Tr. 4, 5, 7, 11.)

3. The court erred in overruling appellant's motion to exclude the testimony and evidence and to give judgment for defendant, to which ruling defendant duly took exception. (Tr. 6, 7, 38, 39, 52.)

4. The court erred in overruling appellant's objection to the question propounded to the defendant by the City of Birmingham as follows:

"You were aware that there had been some trouble at the Trailway Bus Station?"

5. The court erred in overruling appellant's objection to the question propounded to the defendant by the City of Birmingham as follows:

"You were aware that this trouble involved Freedom Riders, is that correct?"

6. The court erred in overruling appellant's objection to the question propounded to the defendant by the City of Birmingham as follows:

"Were you instrumental in any way in bringing the Freedom Riders to Birmingham?"

to which ruling defendant duly took exception. (Tr. 97.)

7. The court erred in overruling appellant's objection to questions asked of the appellant by the City of Birming-
[fol. 57] ham concerning telephone calls or letters received from some alleged "Freedom Riders", to which ruling defendant duly took exception. (Tr. 47, 48.)

Orzell Billingsley, Jr., Peter A. Hall, Attorneys for Appellant.

Certificate of Service (omitted in printing).

[fol. 58]

IN THE COURT OF APPEALS OF ALABAMA

OCTOBER TERM, 1962-63

6 Div. 856

FRED L. SHUTTLESWORTH

v.

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

JUDGMENT—October 23, 1962

February 8, 1962

Transcript Filed.

May 3, 1962

Come the parties by attorneys, and submit this cause on briefs for decision.

October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 59]

IN THE COURT OF APPEALS OF ALABAMA

OCTOBER TERM, 1962-63

6 Div. 856

FRED L. SHUTTLESWORTH

v.

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

OPINION—October 23, 1962

CATES, Judge

Shuttlesworth was found guilty under §856 of the City Code of Birmingham for interfering with the chief of police in the latter's taking certain Freedom Riders into "protective custody."

[fol. 60] Taking into protective custody we consider to mean the receiving of some one who places himself voluntarily under the protection of a peace officer.

Outside the bus station was a crowd of some 250 to 300 shouting for the police to give way, to let them take care of the Freedom Riders en route to Montgomery who, on the walkout of bus drivers, were stranded in Birmingham. The crowd was trying to press forward toward the bus loading platform. Streets were blocked—Nineteenth entirely; Seventh Avenue between Eighteenth and Nineteenth.

Shuttlesworth has argued to us that the chief of police was not in the discharge of any legal duty. *Harris* v. *Tuscaloosa*, 21 Ala. App. 392, 108 So. 768, does not apply here; nor are *People* v. *Papp*, 185 N. Y. S. 2d 907, and *White* v. *Edmunds* [1790], Peake 123, in point.

This argument can avail the appellant nothing, because his conduct was also that prohibited by §825 of the City Code which provides for the same degree of punishment as §856, §825 making it an offense against the City for any

person to commit an assault.[1] *Andersen* v. *United States*, D. C. Mun. App., 132 A. 2d 155; affirmed 253 F. 2d 335. See *Duncan* v. *Jones* [1936], 1 K. B. 218.

The definition of assault is well known from the common law. In *Kennedy* v. *State*, 39 Ala. App. 676, 107 So. 2d 913, we had occasion to consider some of the elements of resisting arrest.

There may be a species of resisting an officer without at the same time committing an assault. Cf. *Dist. Col.* v. *Little*, 339 U. S. 1; *Innes* v. *Wylie* [1844], 1 Car. & Kir. 257; *Patterson* v. *Sylacauga*, 40 Ala. App. 239, 111 So. [fol. 61] 2d 25. But under the wording of §856 opposing or interfering or hindering are alternatives to resistance, so that it is our view that an assault is an offense included in §856 in the alternative here pertinent.

Inasmuch as Shuttlesworth blocked the chief's path using words from which the intent to do so "in rudeness or in anger" could probably and rationally be inferred, there was no error in his conviction, since he could have been clearly convicted of a simple assault. The judgment below is due to be

Affirmed.

Price, P. J., and Johnson, J., concur in result.

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[1] §825 reads: "Any person who commits an assault, or an assault and battery, upon another person, shall, on conviction, be punished as provided in section 4."

§856 reads: "Any person who knowingly and wilfully opposes or resists any officer of the city in executing, or attempting to make any lawful arrest, or in the discharge of any legal duty, or who in any way interferes with, hinders or prevents, or offers or endeavors to interfere with, hinder or prevent such officer from discharging his duty, shall, on conviction, be punished as provided in section 4."

§208 reads: "The chief of police or any policeman of the city has authority and it is his duty to make arrests for offenses against the laws of the state in all cases where such authority is now or shall hereafter be conferred on such officers by the laws of the state, and in making such arrests, whether with or without a warrant, they shall have all the authority conferred, and be subject to all the duties imposed upon such officer, by the laws of Alabama, in existence now or that may hereafter be enacted."

[fol. 62]

IN THE COURT OF APPEALS OF ALABAMA

SIXTH DIVISION No. 856

[Title omitted]

APPLICATION FOR REHEARING—November 7, 1962

Now comes the Appellant in the above styled cause and respectfully moves the Court for a rehearing of this cause, and prays that upon such rehearing, that, the Order and Judgment of this Court, made and entered on the 23rd day of October, 1962, affirming the decision of the Circuit Court of Jefferson County, Alabama, finding Appellant guilty of a violation of Section 856 of the City Code of Birmingham, Alabama, of 1944, and fixing his punishment and fine at $100.00 and One Hundred Eighty (180) days at hard labor for the City of Birmingham, be set aside and held for naught, and that in lieu thereof a Judgment and Decree of this Court made, and entered, reversing the said Judgment and sentence of the Circuit Court of Jefferson County, Alabama.

Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

IN THE COURT OF APPEALS OF ALABAMA

OCTOBER TERM, 1962-63

6 Div. 856

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application be and the same is hereby overruled.

Per Curiam.

[fol. 64]

IN THE SUPREME COURT OF ALABAMA

No. 6 Div. No. 940 SIXTH DIVISION

FRED L. SHUTTLESWORTH, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed December 5, 1962

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Peter A. Hall and Orzell Billingsley, Jr., and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain Judgment of the Court of Appeals rendered on to-wit: October 23, 1962, wherein Fred L. Shuttlesworth was Appellant and the City of Birmingham was Appellee, which Judgment affirms a Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of November, 1962.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner with violating Sec. 856 of the General City Code of Birmingham, viz:

> "Any person knowingly and wilfully opposes or resists any officer in executing or attempting to make any lawful arrest, or in the discharge of any legal duty, or who in any way interferes with, hinders or prevents, or offers or endeavors to interfere with hinder or prevent such officer from discharging his

duty, shall on conviction be punished as provided in Section 4.

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinance which formed the basis of the [fol. 65] prosecution, as applied to appellant; constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinance was unconstitutional on its face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty of interfering with an officer in the performance of his lawful duties and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of One Hundred & Eighty (180) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentence, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Petitioner on appeal argued that at the time in question, the Chief of police was not in the discharge of any lawful duty. However, the Court of Appeals discounted this argument in its opinion and found that petitioner's conduct in blocking the Chief's path, attended with words from which it could "probably" and "rationally" be inferred that he intended to do so, "in rudeness or in anger", amounted to an assau't prohibited by the General City Code of Birmingham, Section 825. The Court further found that an assault is included in Section 826.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinance and Complaint, the basis of the prosecution, are unconstitutional on their face,

that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

B. That the Ordinance and Complaint, the basis of the prosecution and conviction, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of due process of law, the equal protection of the laws, all in violation of the Fourteenth Amendment to the United States Constitution.

[fol. 66] C. That your petitioner's action might constitute an assault on the Chief of Police.

Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, as provided by law and the rules and practice of this Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises as to this Court may seem appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

[fol. 67] *Duly sworn to by Peter A. Hall, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 68]

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1962-63

6 Div. 940

FRED L. SHUTTLESWORTH

v.

CITY OF BIRMINGHAM

Petition for Writ of Certiorari to Court of Appeals

OPINION—December 20, 1962

MERRILL, Justice.

The petition for certiorari to the Court of Appeals must be stricken because it is not on transcript paper. Supreme Court Rule 32; *Ex parte Cranmore*, 129 So. 2d 688; *Ex parte Davis*, 269 Ala. 58, 110 So. 2d 306; *Accardo* v. *State*, 268 Ala. 293, 105 So. 2d 865; *McDonald* v. *Amason*, 267 Ala. 654, 104 So. 2d 719; *Ladd* v. *State*, 266 Ala. 586, 98 So. 2d 59.

Petition for Writ of Certiorari Stricken.

Livingston, C. J., Simpson and Harwood, JJ., concur.

[fol. 69] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

No. 940 SIXTH DIVISION

[Title omitted]

APPLICATION FOR REHEARING—Filed January 4, 1963

Now comes petitioner, in the above styled cause, and respectfully moves this Honorable Court to grant to him a Rehearing in said cause, and reverse, revise and hold for naught its judgment rendered on to-wit, the 20th day of December, 1962, denying petitioner the Writ of Certiorari and striking the petition, and to enter an Order reinstating petitioner's said petition, and directing that a Writ of Certiorari be issued out of and under the Seal of this Court, to the Court of Appeals of Alabama, to the end that this cause may be reviewed and determined by this Honorable Court.

Appellant further moves the Court to grant a Stay of Execution in this cause, during the pendency of this Application for a Rehearing.

Submitted herewith is a Brief and Argument, in support of said Motion.

Peter A. Hall, Orzell Billingsley, Jr., 1630 Fourth Avenue, North Birmingham, Alabama, Attorneys for Appellant.

[fol. 70]

IN THE SUPREME COURT OF ALABAMA

The Court Met Pursuant to Adjournment

Present: All the Justices

6th Div. 940

[Title omitted]

ORDER STRIKING PETITION FOR CERTIORARI—
December 20, 1962

Comes the Petitioner and the petition for Writ of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court,

It Is Considered and Ordered that the petition is hereby stricken at the cost of Petitioner for which costs let execution issue.

Opinion by Merrill, J.

Livingston, C. J., Simpson and Harwood, J. J., concur.

IN THE SUPREME COURT OF ALABAMA

Present: All the Justices

6th Div. 940

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—
February 28, 1963

It Is Ordered, that the application for rehearing filed on January 4, 1963, be and the same is hereby overruled.

No Opinion Written on Rehearing.

[fol. 71] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 72] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 73]

SUPREME COURT OF THE UNITED STATES

No. 168, October Term, 1963

FRED L. SHUTTLESWORTH, Petitioner,

vs.

CITY OF BIRMINGHAM

ORDER ALLOWING CERTIORARI—October 14, 1963

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice White took no part in the consideration or decision of this petition.